990 — WILLIAM L. HARRIS was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cohen:

Q. Mr. Harris, where do you live? A. Reedsport, Oregon.

Q. What county is that in? A. Douglas.

Q. What is your occupation? A. Business agent for the CIO workers.

Q. How long have you held that position? A. Since June, 1941.

Q. Have you held any other position with the union? A. I was president of the District Council beginning in July, 1938, and executive board member of the International beginning January, 1940.

Q. How many men are presently in your union? A. Approximately 1,000.

Q. Mr. Harris, can you tell me the names of the companies with which these men are connected? A. Yes. We have the Crown-Zellerbach, the Gardiner Lumber Company, E. K. Woods, Cape Arago Lumber Company, Bridge Lumber Company, Doernbecher Manufacturing—

The Court: Are they down there?

991 A. Yes.

The Court: Do they log?

A. Yes.

The Court: Do they have a mill down there?

A. No, just logging. Rodney-Laskey Logging; H. H. Laskey; Virgil Veysey; Compton & Grant; and Bridge Lumber Company—did I mention that?

Q. What area does this cover? A. The Siuslaw Forest Products; Patten & Blinn Lumber Company—

Q. Mr. Harris, I will repeat the question. What area

does this cover? A. Western Lane and Western Douglas County.

Q. Do any of the men for these companies you have mentioned haul lumber outside of Oregon? A. Occasionally, yes.

Q. Now, do these companies or any others that you can recall carry any prepaid medical care plan insurance? A. They all do.

Q. Referring to group contracts, what organization holds most of the contracts in your area? A. It is fairly divided between the Industrial Hospital and the Eugene Hospital.

Q. In your position as business manager do you come into fre ent contact with the men? A. I do.

992 Q. Do the men bring you their problems, and do these problems include the refusal of doctors to accept hospital association tickets? A. They do; that is correct.

Q. Has it been a matter of inconvenience and difficulty to the men because the doctors refuse these tickets? A. Yes, naturally. When they don't accept a ticket, why, then they have to get an itemized statement or pay the bill and get a receipt, and many of them don't know the practice of the association, and they either have to turn it in to the company or to the union, or in case when they turn it in to the union, why, we forward it to the Industrial Hospital Association for collection.

Q. Mr. Harris, while you were president of the District Council did the men change from one hospital association to another? A. At Coos Bay; that is correct. In the Coos Bay Logging Company Mill, two mills and woods, they changed from Coos Bay Hospital Association to the Industrial Hospital Association.

993 Mr. Cohen:

Q. What was the occasion for this change? A. Lack of service. The men were dissatisfied in the lack of service being given them by the Coos Bay Hospital Association.

Q. Mr. Harris, is there a hospital in North Bend? A. There is, the Keizer Hospital.

Q. Is that the only hospital there? A. Yes.

Mr. Cohen: Your witness, Mr. Jaureguy.

Cross Examination

By Mr. Jaureguy:

Q. What was the name of that hospital in North Bend? A. Keizer.

Q. Keizer? A. Keizer Hospital.

The Court: Spell it, please.

A. (Spelling) K-e-i-z-e-r. It is owned by two doctors, Drs. Keizer, two brothers. Their father originally established it.

Mr. Jaureguy:

Q. And how many are there over at Coos Bay? A. Coos Bay has the McAuley Hospital.

Q. Just one? A. Just one.

Q. One in Coos Bay and one in North Bend?

The Court: That would be Marshfield?

994 A. Yes.

The Court: None in North Bend?

A. The one in North Bend. Marshfield was changed to Coos Bay a few years back.

The Court: None in North Bend?

A. Yes, Keizer.

The Court: Oh, I see.

Mr. Jaureguy:

Q. North Bend and Coos Bay are adjacent? A. There is a little strip of land called "No Man's Land" between them.

Q. They had a lot of argument about consolidating them at one time? A. Yes.

Q. Now, you say the Coos Bay Logging Company changed from the Coos Bay Hospital Association to the Industrial Hospital Association? A. Yes. That was when I was President of the District Council. There have been a lot of changes since I went to Reedsport.

Q. Now, is this refusal to take tickets on the part of the doctors that you testified about, does it apply both to the Industrial Hospital Association and the Eugene Hospital? A. Well, I'd say in this way, even the Coos Bay Hospital Association will not honor the Eugene, or vice

versa, and they will not honor the tickets of the Industrial either.

Q. So the doctors that do not honor tickets; they
995 treat everybody alike, they won't honor the tickets of the Eugene Hospital & Clinic or of the Industrial Hospital Association? A. They honor nothing but their own tickets.

Q. Nothing but their own? A. That is right.

Q. And the doctors in Eugene that are in the Eugene Hospital & Clinic, they won't honor the Coos Bay Hospital Association tickets? A. We have no record of them ever honoring them.

Q. Have you any record of them not honoring them? A. Yes. In the case of our local union chairman, W. B. Attaway, who had to go to a hospital in Eugene, and when he got there I went to see him and he asked me to go down to the office of the Sacred Heart Hospital. He said, "There is a letter down there I would like to have you see." So I went down, and here was a letter from the Coos Bay Hospital Association advising the Sacred Heart Hospital that they had not authorized this man to go to the Sacred Heart Hospital or for Dr. Sether to treat him, and they would not honor the bill. I immediately notified the Coos Bay Hospital Association and their manager, as usual, said, "We made a mistake."

Q. Oh. A. But he would only pay $103.50 of a $155 bill, and for that reason we in Local 140 then began moving to calling other associations to find out if we shouldn't
996 seek a change, and as a result we did get changes in most of the operations.

Q. That is, you changed from Coos Bay Hospital Association to Industrial Hospital Association because the doctors in Eugene would not recognize the tickets of the Coos Bay Hospital Association? A. Not only because—it wasn't a question of the doctors in Eugene, possibly. It was a question of the doctors in Coos Bay with their own association limiting us to only their doctors within their own association.

The Court: You must have a large membership, don't you?

A. That is right, we do, your Honor.

The Court: And you can tell the doctors and hospitals to do what you want, can't you?

A. Well, not necessarily.

The Court: Well, you can shove them around a good deal?

A. No, I don't think you can shove the medical associations around very much.

The Court: Well, you feel you can?

A. No. We feel we would like to, maybe. I might go further on that. The Bridge Lumber Company and the Gardiner Lumber Company mills went under the Industrial Hospital Association because they were dissatisfied; the workers were with Coos Bay, and immediately the doctors refused to honor the tickets of the Industrial Hospital Association, and through that pressure those two went back under the Coos Bay.

997 Mr. Jaureguy:

Q. Oh, yes, so they go from one to the other? Some go from Coos Bay Hospital to Industrial because of the refusal to take tickets and some go from Industrial to Coos Bay Hospital Association for similar reasons? A. That is not correct.

Q. Why? A. They go from Coos Bay to Industrial because of lack of service on the part of the association.

Q. Oh. A. They go from Industrial to Coos Bay because doctors refuse to accept tickets.

Q. Well, did you say that some of the Coos Bay Hospital Association doctors won't even recognize their own tickets? A. I said in Eugene.

Q. Oh, in Eugene they wouldn't? A. That they didn't recognize Coos Bay tickets, and vice versa.

Q. And down in Coos Bay and Western Lane County the doctors won't recognize Eugene Hospital tickets? A. Won't recognize what?

Q. Eugene Hospital & Clinic tickets. A. I know of no case where the Eugene Hospital will allow any of their covered employees to go anywhere else except their own doctors. They tell us that very emphatically when they sign the contracts. Only in case of emergencies can you go outside of their own doctors. In the case of the

998 Coos Bay Hospital, if you want to go to a specialist you had to have three of their doctors give you an okeh, and, of course, that meant you couldn't go anywheres.

Q. These slips or tickets that the doctors get from Industrial Hospital Association has the address of the In-

dustrial Hospital Association, doesn't it? A. Yes, that is correct.

Q. Well, then, I don't understand why the men don't know where to send in the bills. A. When the member—he doesn't always carry a typewriter along with him, and all these members aren't probably familiar enough to know they should copy those addresses down. It is certainly an injustice to them and they resent it. They take it into the company or the union to have one or the other of us rectify it.

Q. That is, you take the bill that the doctor gives and you send that in to the Industrial Hospital Association to get them paid? A. That is correct.

Q. Do you have any trouble getting them paid? A. No, sir.

Mr. Jaureguy: That is all. Thank you.

(Witness excused.)

Mr. Marcus: Now, I would like to call your
999 Honor's attention to another item in one of our exhibits; that is, Exhibit 337, which is an account of a meeting of the Council of the Oregon State Medical Society in October of 1939, and this item appeared in the November issue of the Northwest Hospital Journal.

"One of the defects of existing local plans of medical care which to some extent have inevitably followed the pattern of the commercial hospital associations is in inclusion of hospitalization, drugs, and a limited amount of dental service. The inclusion of these services in effect makes the physician members the insurer for all their services, their compensation consisting of the amount available after all other services have been paid for. The policy and program of the Society contemplates the ultimate elimination of hospitalization, drugs and dental services from approved local plans and the limiting of such plans to supplying physician services alone."

My attention has been called to the fact I called it the Northwest Hospital Journal. It is Northwest Medicine.

ABBOTT W. LAWRENCE was thereupon produced as a witness in behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Lawrence, what is your occupation? A.
1000 I am paymaster for Shepherd and Morris Lumber Company.

Q. And that is the successor to the Westport Lumber Company? A. That is right, 1945.

Q. And how long have you been with the company? A. Twenty-seven years.

Q. And how long have you held your present position? A. About twenty years.

Q. And in that position do you come in contact with the prepaid medical care plan of the company? A. That is right.

Q. And does that company carry prepaid medical care insurance? A. They do.

Q. With what organization? A. Industrial Hospital Association.

Q. To your knowledge has difficulty been had with respect to doctors accepting the tickets of that organization? A. Some doctors, not all.

The Court: What locality is this?

A. Westport, Oregon.

The Court: You have a lot of cumulative testimony about Clatsop County, Westport.

Mr. Marcus: Well, your Honor, my primary purpose in having this witness after having one person from the Westport Lumber Company is to develop something other than I developed from him. These are preliminary
1001 questions.

Did you have occasion about a year or so ago to visit Dr. Lyman in Portland? A. I did.

Q. And what occurred at that time? A. Well, an eye examination.

The Court: An eye man?

A. An eye examination.

The Court: (Spelling) L-Y-M-A-N?

A. Lyman, (Spelling) L-Y-M-A-N.

Mr. Marcus:

Q. And what occurred at that time?

Mr. Jaureguy: I object to this as hearsay and not binding on the defendants.

The Court: He may answer.

A. A routine examination for glasses, of course, and optical fitting. And during the course of the examination the doctor, of course, knew where I was from and knew my position, and he spent considerable time during the examination trying to convert me to OPS, plainly speaking. I didn't react too well, we being well satisfied, practically without exception, to the IHA in our twenty-five years of experience with them at Westport.

The doctor made a statement which I didn't approve of which indicated that in his opinion the Industrial Hospital Association, along with all other associations, was on the way out, that they could not economically compete with the Oregon Physicians' Service.

1902

Mr. Marcus:

Q. Now, Mr. Lawrence, in the course of your duties with the company have you had occasion to discuss prepaid medical care with representatives of the Oregon Physicians' Service? A. We have had one—We have had two visits to my memory, maybe three.

Q. And could you tell us about those visits? A. The first one I should judge occurred about, oh, three years ago. I am not certain about that. And after a friendly discussion, which the purpose of the visit of the field man was to secure information on the date of expiration of our contract and to get our reaction in the timekeeping department as to whether we were satisfied with past service, and in the course of conversation I made a few remarks that I felt that the tactics as being exercised by certain groups of doctors was unethical and un-American in principle, and we felt competition was the life of good service, but if that was destroyed we would all suffer, and apparently that type of conversation didn't set well. The result of the interview was that the statement was made by this representative—in fact, I don't know whether I can quote him exactly, but in fact he implied that we may not

take the OPS now, meaning then, of course, but eventually we would be forced to take them because there would be no other organization to take.

1003 Q. And you said you had another— A. The second visit was by a much different personality, a man of different personality. He made a different presentation of the Oregon Physicians' Service; a very friendly visit was had and no such statements were made.

Q. And the company still has the Industrial Hospital Association coverage? A. That is true.

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. I take it the OPS has a variety of personalities on their sales force, then? A. Yes, I would say quite decidedly between those two men.

Q. The second one was different? A. He was more of a gentleman, I would say.

Q. Well, I don't like to ask you to name names, but I suppose it is all right if you name the gentleman's name. A. I couldn't tell you the name of either. They made very little impression on me at the time.

Q. But the gentleman, the one with the gentlemanly personality wasn't able to sell you on the idea either? A. No, because we weren't dissatisfied with what we had.

Q. This failure of doctors, to take tickets, that
1004 doesn't cause you much trouble, does it? A. It has caused an exceedingly—

Q. Beg pardon? A. It has caused an exceedingly lot of trouble in the past.

Q. At times? A. And a great deal of dissatisfaction.

Q. You know, I am sorry but there is so much noise going on I am having trouble hearing you. Maybe I better get up closer. A. The fact we have had to transmit these tickets for payment—

The Court: Pardon me for interrupting. Recess.

(Short recess.)

By Mr. Jaureguy:

Q. I think you said it was quite a lot of trouble to send in these tickets? A. Yes, it is.

Q. Do the men merely bring the tickets to you and then you send them in, or do most of them send them in themselves? A. No, we send them in for them.

Q. You do that? A. Yes.

Q. That is your general practice? A. Yes.

Q. Do you have any trouble collecting from Industrial on the bills you send in? A. They pay according to their fee schedule.

Q. I do not suppose you could give us an approximation of the proportion of the bills you send in that they
1005 pay in full and the proportion of the bills which they only pay in part? A. That is rather difficult. The only ones we hear about are the ones that are reported to us that are paid short. I think it is a small percentage.

Q. On some of them, where they only pay a part, that is because part of the service does not come under the contract? A. Well, take my own case, for instance?

Q. Yes. A. I had a tonsillectomy in June. The Association allows I believe $35 for that operation. They paid my hospital bill and paid the doctor $35 and I was billed for $15, which I expected to pay and paid.

Q. You were billed by the doctor for $15? A. That is right.

The Court: This gentleman has not been identified as to whether he is an employer or employee.

A. I am an employee.

Mr. Jaureguy:

Q. You are the paymaster? A. The paymaster, an employee.

The Court: Paymaster for whom?

A. Shepherd and Morris Lumber Company.

Mr. Jaureguy:

Q. At Westport? A. That is right.

The Court: Is he a union leader? I assume so.

Mr. Jaureguy: Union leader? No, he works for
1006 the company. He is on that side of the fence.

A. That is right.

The Court: Are you a leader in the union?

A. No, I am not. I am the paymaster, paid by the company, and work in the office making out the payrolls.

The Court: Do you belong to the paymasters' union?

A. We do not have any, no.

The Court: They have a foremen's union?

A. We threatened to join a few times.

Mr. Jaureguy:

Q. I take it when you had your tonsils out the doctor sent one bill to the Industrial and another to you, or did he give you the $50 bill? A. No. This doctor is a Clatskanie doctor, ten miles distant. These two doctors that operate there have taken tickets for years. There has never been any trouble about it at all. Any overcharges, they bill the patient direct.

Q. Then you have had some case, I suppose, where there was an overcharge and the doctor did not take tickets and, so, you sent in the bill to Industrial and they reimbursed your member for part of the bill because of the overcharge? A. Yes, sir.

Q. Are there some cases where the doctor did two or three things or more and some were covered by the Industrial contract and some were not? A. No, I have no recollection of that. There might be isolated cases
1007 where there was a question of coverage due to the lack of payment of dues or something like that, but it would be a long-drawn-out affair, but that is not a usual thing.

Q. Doctors that do not take slips, they give statements, though, sufficiently itemized so you can get reimbursement? A. Sometimes they do and sometimes they do not. Sometimes the Association has to ask for it.

Q. Sometimes you have to ask for it? A. Yes, that is true.

Q. Then they give it to you? A. That is right. It don't come to me. It goes to the Association generally, directly.

Q. Well, the Association has told you, hasn't it, that is perfectly satisfactory to the Association if the doctor gives an itemized bill instead of taking a ticket? A. Oh, yes, that is free choice to the individual.

Q. The free choice of the individual? A. The free choice of doctors, yes.

Q. And a free choice of the doctor, as to whether he takes a slip or gives an itemized statement? A. I assume so. That is the way it is practiced.

Mr. Jaureguy: That will be all.

(Witness excused.)

1008 Mr. Marcus: Your Honor, I would like to read a paragraph from the minutes of November 5, 1939, of the Council of the Oregon State Medical Society, and the exhibit is No. 338:

"Dr. Fitzgibbon called attention to the recent newspaper publicity concerning contemplated medical and hospital contracts to be offered individuals and families by the National Hospital Association, and expressed the opinion that members of the Society should be informed as to whether this and similar insurance plans conformed to the principles of medical ethics.

"Upon motion, duly made and seconded, it was voted that the Executive Committee be instructed to prepare and send out a statement to the entire membership, interpreting the principles of medical ethics in relation to medical insurance plans."

CLARENCE ANDERSON was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Galassi:

Q. What is your occupation, Mr. Anderson? A. I am a lumber buyer.

Q. With what company? A. At the present time
1009 with J. H. Lansmann & Company of Portland.

Q. Have you at any time been connected with the Kercher Lumber & Logging Company of Forest Grove? A. I have.

Q. In what county is Forest Grove? A. In Washington County.

Q. When were you with that company? A. From the first part of January, 1946, until the end of August, 1949.

Q. How long has the Kercher Company been in operation, do you know? A. Since those dates, January, 1946, to 1949.

Q. In what capacity were you connected with the Kercher Company? A. I was office manager.

Q. Will you tell us, please, the general nature of your duties in that position? A. Well, setting up procedures and seeing to it that they were followed through, and expediting the payrolls, and buying and shipping lumber.

Q. How many employees did the Kercher Company have at the time you were there? A. Fifty-two.

Q. Fifty-two? A. Yes.

1010 Q. Were those employees covered by prepaid medical care insurance? A. Yes, they were.

Q. During the entire time you were with the company? A. Yes. We signed a contract with National, I believe it was, on April 17, 1946.

Q. Is that the National Hospital Association? A. The National Hospital Association, yes.

Q. Was that a group contract? A. A group contract.

Q. Did it also cover the executives and office employees of the company? A. That is right.

Q. Did the employees continue to be protected under that contract during the entire time you were there? A. That is right.

Q. To your knowledge, did the employees have any trouble or difficulties in connection with the refusal by doctors to accept National tickets or National checks in payment of treatment afforded employees? A. The first occasion was, I believe, in March, 1947, and running through until July; that is, two different occasions.

Q. Did that trouble continue during this period? A. Well, it perhaps would have, but the men there are strong National, out through the logging industry, through

1011 that area, and when they would come to the office, why, after having these tickets turned down and the men having to pay their own bills, why, we did not instruct them to go elsewhere, but we did point out the fact that they might run into difficulty if they took their tickets down to Hillsboro and, as nearly as possible, to go to Forest Grove where they would be accepted.

Q. Why did you tell them that they might have difficulty in Hillsboro? A. Well, it seems the doctors in Forest Grove would accept these tickets, but it was common knowledge, plus the experience we had on two occasions, that they would not accept them in Hillsboro. That might not be true with all the doctors, but it was in specific cases.

Q. You say because of the experience you had. Was it the practice of the men who ran into this type of difficulty to bring their problems to you? A. Well, that is about the first place they would come to.

Q. What action did you take, other than giving them the advice you spoke about? A. Well, on the two occasions there, why, they would not accept the tickets, and I contacted the National Hospital Association and they advised for us to advise the men that, if they run across any in-

stances like that to go ahead and pay the bills and return them to them and they would reimburse the men.

Q. I didn't get that straight. You mean the
1012 National advised you for the company to pay the bill of for the individual? A. For the individual to pay the bill.

Q. Was there any trouble where these incidents arose in getting the doctors to give itemized statements? A. No, we did not experience any difficulty getting statements.

Q. Did the National always reimburse or refund the men in full? A. A hundred per cent without exception.

Q. Did this trouble require you or any other employee in the office to spend extra time and effort in settling of these difficulties? A. Yes.

Q. In what way? A. Well, there was additional correspondence, and this did provoke more or less of a feeling of dissatisfaction among the men that were working there, that they did not have proper security.

Q. I am going to show Exhibit No. 1100. Approximately the first ten sheets in this exhibit consists of a sheaf of correspondence, checks and bills, between the Kercher Logging & Lumber Company and the National Hospital Association. I will ask you if you are familiar with those papers? A. Yes, I am.

Q. Are they typical of the type of correspondence and extra work incurred by you as a result of these refusals by doctors? A. That is right.

1013 A. That is right.

Q. During the time you were with the Kercher Logging & Lumber Company did they do any interstate business? A. Well, if I understand you correctly, we shipped lumber all over the United States.

Q. You did ship lumber outside the State of Oregon? A. Oh, yes.

Q. Did any company employees covered by the National Hospital Association contract live outside the State of Oregon? A. We had one employee, a maintenance man, that did, a master electrician.

Q. One? A. One.

Q. Where did he live? A. Vancouver, Washington.

Q. He was covered under that group contract? A. Oh, yes.

Q. Do you know whether or not he had any occasion to go to a doctor in Oregon for treatment under that coverage? A. I remember on several instances he did.

Mr. Galassi: That is all. Your witness.

Cross Examination

By Mr. Jaureguy:

Q. I am looking at this exhibit, Exhibit 1100, that you looked through. Did you look through it entirely?
1014 A. I looked in so far as our correspondence with Industrial was concerned.

Q. There is a lot of Klamath Falls stuff here. A. We didn't have anything to do with that.

Mr. Galassi: If I may refer to the fact, only the first ten sheets on the top pertain to the Kercher Company.

Mr. Jaureguy:

Q. As a matter of fact, the first ten sheets comprise all the correspondence you had on the subject? A. I ran into the Industrial there. We had nothing to do with it. What I am interested in here is on the top here.

Q. Then the first ten sheets comprise all of the correspondence you have had on the subject? A. That is right.

Q. It is not only typical of that correspondence; it is all the correspondence? A. That is right.

Q. Counsel kind of stepped over when he said it was typical, didn't he? As I understand it, you went there in the spring of 1946? A. 1946, yes.

Q. Do you remember the month? A. January.

Q. January, 1946? A. Yes.

Q. Then, as I understand it, it was in March, 1947,
1015 before any incident arose where a doctor preferred not to take a National ticket? A. That is right.

Q. Then you did not have any other incident such as that until December, 1947? A. There was another one in July.

Q. What is that? A. There was another one in July.

Q. One in March and one in July? A. One in March and one in July.

Q. I get the impression from what you say that both instances or incidents occurred in Hillsboro? A. That is right.

Q. So, then, you told the men that as far as you knew in Forest Grove all the doctors were taking tickets? A. We never had one turned down in Forest Grove.

Q. You so advised the men? A. That is right.

Q. As far as you knew, in Forest Grove they were all taking them? A. Right.

Q. In Hillsboro you had had two instances where they did not take them? A. That is correct.

Q. About how many times a month, a week or a
1016 year, do members of your organization have to go to a doctor to obtain services covered by the National Hospital Association contract? A. You mean the organization, as well as the employees?

Q. That is right. A. Yes, I see. Oh, it would vary, of course, at times of the year. Lots of them went there for colds; some for injuries off the job.

Q. You think it would average ten times a week that your men would have to go to doctors? A. I would say it would average at least ten times a week, that is, throughout the year; sometimes it was heavier than others.

Q. Did it average ten times a week from January 1, 1946, until 1949, when you left there? A. Let's get it down to about seven and then we have just about got it.

Q. We would be safe if we went seven? A. That is right.

Mr. Jaureguy: Okeh. Thank you.

Redirect Examination

By Mr. Galassi:

Q. That correspondence which I showed you is typical, is it not, of the type that you had with National in connection with these difficulties? A. That is right.

1017 Mr. Galassi: That is all.

Recross Examination

By Mr. Jaureguy:

Q. We have got to find out which it is. I understood you to say that the first ten pages of the exhibit comprised all the correspondence you had with National on this subject? A. A great deal of it was carried on by telephone.

Q. I am talking about correspondence. A. Correspondence, that is it.

Q. That is all of it? A. That is right.

Redirect Examination

By Mr. Galassi:

Q. But that is with respect to the one account, is it not? A. That is with respect, I think, to the two accounts.

Recross Examination

By Mr. Jaureguy:

Q. The two accounts is all you had? A. That is all we had trouble about.

Q. Two in three years? A. That is right.

Q. Or three years; three and a half, wasn't it, from January, 1946, until August, 1949? A. That is correct.

Mr. Jaureguy: Yes.

(Witness excused.)

1018 ALBERT FLEGEL was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Weinstein:

Q. Where do you live, Mr. Flegel? A. Roseburg, Oregon.

Q. What is your occupation? A. I am managing partner of Flegel Transfer & Storage Company.

Q. How many partners have you? A. One.

Q. What county is Roseburg in? A. Douglas.

Q. Do you hold any position with the City of Roseburg?

The Court: He is Mayor, too, I understand.

The Witness: Thank you, your Honor.

Mr. Weinstein: Yes, thank you, your Honor. I was going to bring that out.

Mr. Jaureguy: We ought to add he is the brother of a State Senator, too.

Mr. Weinstein: I would like to add that too, If I may. He is the brother of a State Senator, too, your Honor.

The Court: So I have heard.

Mr. Weinstein:

Q. How long have you been in the transfer bus-
1019 iness? A. Almost four years.

Q. Has all that time been in Roseburg? A. Yes.

Q. How many employees do you have? A. Thirteen.

Q. Does your transfer company handle any shipments coming into Oregon from other states? A. Yes.

Q. Will you explain the mechanics of that. A. Well, we have Interstate Commerce Commission rights for gen-

eral commodities within Douglas County. We have been handling shipments from various freight concerns that ship freight into Roseburg, and we distribute for them out of Roseburg. We also have Interstate Commerce rights from three counties in Southern Oregon into or from the State of Washington for certain types of equipment.

Q. Then do I get this correctly: Does your company handle any shipments going from Oregon to other states? A. Yes.

Q. Is that the State of Washington? A. All over the United States in household goods.

Q. Will you explain the mechanics of this transfer business. It is not clear to me. A. Household goods are handled outside of the State of Oregon as far as my company is concerned by Bekins Transfer & Storage. Often-
1020 times we must make pickups for Bekins and hold them at our warehouse until such time as Bekins finishes the movement. It might go anywhere in the world, but principally in the United States. We must have rights from the Interstate Commerce Commission before we can handle a shipment that is interstate in character.

Q. Then when you pick the goods up at the person's home, those goods are then beginning a journey which is going outside of Oregon? A. Any goods that are going outside of Oregon, yes.

Q. Does that work the same way for goods coming from outside of Oregon into Oregon? A. In some instances, yes; not all instances. Some instances stop their journey at our warehouse, and they become a local movement then, after they have rested for a certain length of time. In some instances we actually handle them because the Bekins' trucks are too large to get into certain locations, and our smaller trucks must haul them then from our terminal to the outlying area, which would make a portion of it interstate in character.

Q. Are you and the employes of your company entitled to—I won't ask that. I will ask you first, are you and your employees covered by any prepaid medical care contract? A. Yes, we are covered by Industrial Hospital Association.

Q. Are you covered too? A. I am.

1021 Q. Are you and the employees entitled to medical care while you are outside of Oregon under that contract? A. Yes.

Mr. Jaureguy: If they are outside the state. A. I assume he means if I was in Washington and got sick, am I covered. I assume that I am.

Mr. Weinstein:

Q. You assume that from the terms of your contract? A. I don't think I have ever read my contract. I have been told that by the representative of the Hospital Association.

Q. What coverage have you got? Is it group or individual coverage? A. It is a group coverage.

Q. Has your attention ever been called to the doctors refusing tickets of the Industrial or refusing to cooperate? A. Yes, the doctors in Roseburg don't care to take Industrial Hospital Association tickets.

Q. What procedure, then, have you adopted or has your company adopted to handle these accounts when the doctors do not take the tickets? A. I usually ask the man what doctor he wants to see, and I call the doctor and tell him to send me an itemized statement, to the Flegel Transfer & Storage Company, and I pay the bill and bill Industrial Hospital Association.

1022 Q. Have you personally tried to get itemized statements from doctors for the men? A. In one or two instances we have had a little difficulty with itemized statements. We have received statements showing an office call a certain amount, and from past experience we know that the Hospital Association wishes an itemized statement, so my office has endeavored to obtain an itemized statement, and has experienced some difficulty in so doing. But the difficulty has usually been surmounted by a personal call to the doctor himself, and then the itemized statements come through without any more trouble.

Q. A personal call by whom? A. By myself.

Q. Has this resulted in more paper work for your office to handle the cases where the doctors have refused to take tickets? A. To a certain extent. Each time we send a bill in we send a letter of transmittal explaining the situation and saying that the bill is enclosed, and so forth. I would say that five times a month would be about average for the amount of calls my employees make on doctors. Maybe that might be even a little high.

Q. When the Industrial Hospital Association employees sold you the coverage that you have, were you told anything about this ticket business? A. Yes. I was informed

1023 then that I would experience difficulties with the Industrial Hospital tickets, and it was suggested to me that I request the doctors to bill the Flegel Transfer & Storage Company and they in turn—the Hospital Association would then in turn reimburse the company.

Mr. Weinstein: Your witness.

Cross-Examination

By Mr. Jaureguy:

Q. You haven't had to engage in fisticuffs or anything with doctors because of the way they treated the men, have you? A. They are all very good friends of mine.

Q. As far as you have been able to see, they take care of your men all right? A. In excellent manner.

Q. Did the Industrial tell you that it was all right with them whether the doctors took the tickets or whether they gave itemized statements? A. Yes.

Q. It makes no difference to them? A. They wanted itemized statements. I presumed that is what you meant.

Q. That is what I meant. A. Yes.

1024 Q. And the trouble that you have had in getting itemized statements, as I understand it, is when your secretary calls the doctor's nurse they may have some trouble, but when you call the doctor there is no trouble at all? A. That is correct.

Q. There has been no insistence on the part of your men that you leave the Industrial Hospital Association and go to the OPS on account of any difficulty? A. Nothing of any serious nature. I have had a few minor complaints, but it usually smooths over and after a few days they have forgotten any troubles they may have had.

Q. Maybe those were champions of the OPS? A. Possibly.

Mr. Jaureguy: I think that will be all. Thank you.

Mr. Weinstein: That is all.

(Witness Excused)

Mr. Marcus: your Honor, we had another witness scheduled to appear today, but he was driving in and we have been notified that his car overturned and his wife has been seriously injured and is hospitalized. He won't be here. I regret that very much. But that is the situation.

The Court: How many witnesses will you have on Tuesday?

Mr. Marcus: About four, your Honor.

The Court: Will you be through by noontime, do
1025 you think, on Tuesday?

Mr. Marcus: I think so. Perhaps I might want to spend about three-quarters of an hour discussing the theory of the case and what we intend to prove.

The Court: Do you want to do that on Tuesday or on Wednesday?

Mr. Marcus: Just as your Honor wishes.

The Court: It doesn't make any difference. I want you to make some preparation for it.

Mr. Marcus: Then, let's make it Wednesday.

The Court: On Wednesday I want to hear you gentlemen.

Mr. Jaureguy: You will hear us, too?

The Court: Yes.

Mr. Jaureguy: Thank you.

The Court: Adjourned.

1026 Court reconvened at 10:00 o'clock A. M., Tuesday, November 1, 1949.

Mr. Marcus: May it please the Court, there are a few things I would like to call for inasmuch as, with one or two reservations, we expect to conclude our case today.

One is the 1948 minutes of the Oregon State Medical Society.

Mr. Jaureguy: The House of Delegates?

Mr. Marcus: Yes.

Mr. Jaureguy: We have it here.

Mr. Marcus: Thank you. The other is the record with respect to disciplinary proceedings of Dr. Wilford Belknap.

Mr. Jaureguy: I am sorry we overlooked that. We will see if we can get it during the course of the morning.

Mr. Marcus: Correspondence with respect to the McMinnville situation.

Mr. Jaureguy: There is no correspondence with respect to the McMinnville situation.

The Court: With respect to what?

Mr. Jaureguy: I assume he has in mind, in referring to the McMinnville situation, that is something related to the testimony of Mr. Youngman the other day.

Mr. Marcus: That is right. I will now call for the documents subpoenaed from the Yamhill County Medical
1027 Society. With your Honor's permission, during the recess I would like to look at those. I wonder if I could put the doctor on just to identify them?

The Court: Yes.

DR. KENNETH VANZYL was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Doctor, was the Yamhill County Medical Society served with a subpoena duces tecum in this case? A. Yes.

Q. Have you brought with you the documents called for in that subpoena? A. Yes.

Q. What position or office do you hold? A. I am secretary.

Mr. Marcus: I would like to have this marked for identification.

(Minute Book of Yamhill County Medical Society was thereupon marked Plaintiff's Identification No. 1941.)

Mr. Marcus:

Q. I show you Exhibit 1941, marked for identifi-
1028 cation, and ask you whether these are the minutes of the Yamhill County Medical Society called for in the subpoena?

Mr. Jaureguy: I would like to look at it when he is through.

A. Yes, sir. It happens to be the minutes from 1940 on in the book.

Mr. Marcus: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. Just a moment, Doctor. I would like to question you a little. I notice here the minutes of the meeting of the Yamhill County Medical Society February 17, 1948, and that there were present Dr. Law, Dr. Huckleberry, Dr. Williams, Dr. Skelley, Dr. Noble, Dr. Ross and one I can't read— A. Heringer.

Q. These minutes read: "Discussed group health plan being formulated by undisclosed organization. The fact that members of the Medical Society were not welcome at

the community meeting called by the organization, nor were OPS representatives allowed to attend, was considered unusual and not in line with usual policies. A general discussion was then held on the problem."

Did you know much about the organization or what they proposed? First, were you present at that meeting, Doctor? A. I was not.

Q. You were not present? A. No.

1029 Q. You signed the minutes but you were not present? A. That is right.

The Court: We will ask the Doctor to remain until you gentlemen have a chance to look through it. We will ask him to remain.

Mr. Jaureguy: Then I may continue my cross examination at a later time?

The Court: Yes. Doctor, you will have to stay a while, while they look this over.

(Witness excused.)

Mr. Marcus: At this time, your Honor, we would like to offer a document which we have obtained from the files of the American Medical Association, which consists of a partial list of the membership of the Oregon State Medical Society.

Mr. Jaureguy: That is a pretty lengthy document. I assume that I will have an opportunity to make objections at some later time.

The Court: Yes; admitted, provisionally.

Mr. Jaureguy: I make no admissions at this time with respect to this exhibit.

(Partial list of membership of Oregon State Medical Society was thereupon received in evidence and marked Plaintiff's Exhibit No. 1942.)

Mr. Marcus: I am now prepared to call our first
1030 witness, your Honor. After we get through with the witnesses. I will need about fifteen minutes to clear up loose ends.

Elmer Hauke was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Hauke, what is your occupation? A. I am comptroller of the Lower Columbia Cooperative Dairy.

Q. Is that a dairy association? A. A dairy association.

Q. Where is that located? A. We have our main office at Astoria.

Q. How long have you held that position? A. Oh, since October, 1945, I believe it was.

Q. Were you connected with the association prior thereto? A. Yes.

Q. In what capacity? A. As manager of their feed department.

Q. Could you tell us something of the area of operations of the ass[illegible]ation? A. We operate in Clatsop and Columbia Counties in Oregon and, in Washington, in Wahkiakum, Pacific and Cowlitz Counties.

1031 Q. Does the association have a plant in Washington? A. Yes, we do.

Q. Whereabouts? A. At Grays River, Washington.

Q. Does the association ship its products outside of the state? A. Yes.

Q. Does it receive supplies from outside the state? A. Yes.

Q. Are you familiar with the medical care program of the company? A. Yes, I have been quite close to it the last few years.

Q. Does the company now have prepaid medical care for its employees with some organization? A. Yes, it does.

Q. What is that organization? A. The Oregon Physicians Service at the present time.

Q. Did it, at some time prior to the present, have prepaid medical care for its employees with some other organization? A. Yes.

Q. What was the name of that organization? A. We were with the National Hospital Association.

Q. Did that coverage include both employees in Oregon and employees in Washington? A. Yes.

Q. During the period that the company had prepaid medical care with the National and prior to the

1032 change-over to OPS, to your knowledge did the employees of the company, or the association, rather, have difficulty with respect to doctors not accepting tickets on the National Hospital Association? A. Immediately prior to the change-over.

Q. What was the occasion for the change to OPS? A. It was the reluctance to accept tickets when presented by the employees.

Q. Was there some discontent on the part of the employees because of that? A. Pardon?

Q. Was there some discontent on the part of the employees because of that? A. Yes, there was.

Mr. Marcus: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. When was the change made, Mr. Hauke? A. I am not sure of the date. It was in the fall of the year, either 1945 or 1946. I could have checked that, but I don't know.

Q. About how long prior to the change, would you say? About how long prior to the change would you say you noticed doctors were becoming reluctant to take tickets of the National? A. Oh, I would say a period within a year.

1033 Q. So, if it was in the fall of 1945, it was about the fall of 1944 that you noticed doctors were becoming reluctant to take tickets, and if it was in the fall of 1946 that you changed, then it was about the fall of 1945 that you noticed that? A. I would say so.

Q. Did all doctors prefer not to take tickets or merely some of them? A. As far as I know, at first some did take and some did not, and then I think it became quite general that none of them did.

Q. You mean when you first noticed they were not taking them, some of them were merely not taking tickets and then later on they more or less refused to take tickets. A. Yes.

Q. When they did not take tickets, did they give the men itemized statements so they could get reimbursement? A. That was the plan.

Q. Then those itemized statements were sent to the National? A. Yes.

Q. By you or by the men? A. By the employees.

Q. Did they ever have any difficulty in collecting on those itemized statements, do you know? A. Not that I know of, in the collection of them.

Q. What is that? A. Not that I ever heard of in the collection of them.

1034 Q. How has OPS been? Has their service been satisfactory? A. It has been satisfactory.

Mr. Jaureguy: That will be all.

(Witness excused.)

ARLE J. TAYLOR was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cohen:

Q. Where do you live? A. Roseburg.

Mr. Jaureguy: I didn't get the place.

A. Roseburg.

Mr. Cohen:

Q. In what county is Roseburg? A. Douglas.

Q. What is your occupation? A. I work on a maintenance crew in a sawmill.

Q. Where are you employed? A. Youngs Bay Lumber Company.

Mr. Jaureguy: I didn't get that. A. Youngs Bay Lumber Company.

Mr. Cohen:

Q. How long have you been with this company? A. Since December 15, 1935.

Q. With what union are you affiliated? A. Local 1035 2671, A. F. of L.

Q. Have you ever served on any committees of this union? A. Yes.

Q. Will you name the committees? A. The Negotiating Committee, the Plant Committee, the Hospital Committee.

Q. Mr. Taylor, are the men at the Youngs Bay Lumber Company covered by any prepaid medical care plan? A. Oregon Physicians' Service.

Q. How long have the men had that service? A. I believe we are going on the third year, either the second or third. I believe it is the third year.

Q. Were the men covered by any other association prior to OPS? A. Industrial Hospital Association.

Q. What was the occasion for the change? A. The doctors refused to take tickets, and then we couldn't get itemized statements out of them. There was just one jangle

after another, so the sawmill men like that don't have money to pay a doctor when they go up there, and they would not take the tickets, so they took the line of least resistance and took OPS, so if they did not have any money they would accept tickets and go merrily on their way.

Mr. Cohen: That is all.

1036 Cross Examination

By Mr. Jaureguy:

Q. This is the second or third year you have had OPS? A. That is right.

Q. How long did you have Industrial before that? A. They had Industrial when I went to work there for them in December, 1935.

Q. When did you first notice the doctors were preferring not to take tickets? A. Well, it was before we went onto OPS. OPS had a field representative down there who came down there and told us we would take OPS or we would take nothing, so we showed them we would take nothing, so we stayed on Industrial Hospital Association for one more year. We did not like their high-powered methods, so we gave them one more year. They said that Industrial Hospital would have one more year, and then they showed us a bad time for that year. By "they" I mean OPS.

Q. What was that? A. By "they" I mean OPS.

Q. So it was about a year before you changed that the doctors began not taking tickets? A. That is right. Dentists down there won't take OPS tickets now.

Q. Dentists won't take OPS tickets? A. Too hard to get their money.

1037 Q. And some of the doctors down there don't take OPS tickets? A. The M.D.'s don't have no trouble taking OPS tickets; they are really glad to take them.

Q. All of them? A. Practically all of them down there, as far as I know.

Q. You mean by "practically all" three-quarters of them? A. They will take them.

Q. About three-fourths of them? A. I think they will all take them.

Q. You think they will all take them? A. That is right.

Q. But the dentists won't take them? A. The dentists won't take them.

Q. The dentists take Industrial tickets? A. They did the last I knew anything about.

Q. So you changed to OPS either two or three years ago, as you recall? A. Sir?

Q. You changed to OPS either two or three years ago? A. That is right.

Q. And it was about a year before that that the doctors started to refuse to take tickets? A. That is right.

Mr. Jaureguy: That is all.

(Witness excused.)

1038 RALPH E. KOOZER was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Galassi:

Q. What is your occupation, Mr. Koozer? A. Manager of a fruit and vegetable cannery.

Q. What is the name of the company? A. Bagley Canning Company.

Mr. Jaureguy: I didn't get that name.

A. Bagley Canning Company.

Mr. Galassi:

Q. Where is that located? A. Ashland, Oregon.

Q. In what county? A. Jackson.

Q. How long has the Bagley Canning Company been in existence? A. Since October 1st, 1916.

Q. How long have you been connected with the company? A. Since that time.

Q. What is your position with the company? A. General Manager; Secretary and General Manager.

Q. How long have you held that position? A. I have been Manager since October 1st, 1916.

1039 Q. Will you describe the general nature of your duties as Manager? A. Well, we are engaged in the general canning of food business, and my duty is to manage the concern in the way of buying and selling supplies, financing, hiring employees and so forth.

Q. Does the Bagley Canning Company do any interstate business? A. Yes.

Q. Do you ship your products outside of the State of Oregon? A. Right.

Q. Do you obtain supplies and equipment from outside of Oregon? A. Yes.

Q. How many employees do you have? A. Oh, seasonally about 250.

Q. Are these employees covered by prepaid medical care protection or insurance? A. Yes, they have that option.

Q. With whom is that coverage carried? A. OPS at the present time.

Q. Is that a group contract? A. Yes.

Q. Do most of these employees exercise that option? In other words, are most of them covered by that contract? A. Not most, no.

Q. Does the contract include executives and office employees? A. Yes.

Q. How long has your company carried OPS coverage?

A. I think since the fall of 1946.

1040 Q. Did they carry similar prepaid medical care protection prior to the OPS? A. Yes.

Q. With what organization? A. With the National Hospital Association.

Q. Was that also a group contract? A. Yes.

Q. Does the company send salesmen or other employees who are covered under this contract outside the State of Oregon on business? A. Yes. We, every year, send field men down into Northern California to inspect and receive fruits.

Q. Do your duties include the handling of negotiations for this medical, prepaid medical care coverage on behalf of the company's employees? A. Yes.

Q. While the National Hospital Association coverage was in effect, did the employees bring to your attention complaints of difficulties that arose in connection with the refusal by doctors to accept tickets of the National? A. They informed me that the physicians refused to accept hospital slips.

Q. How long had the National Hospital Association coverage been in effect before the change was made? A. I do not recall exactly, but I think we made the con-

1041 tract in 1935 or 1936, in there some place.

Q. What was the occasion for the change? A. Due to the reluctance and inconvenience of the doctors in refusing to accept the hospital slips.

Mr. Galassi: That is all.

Cross Examination

By Mr. Jaureguy:

Q. So you, as I get it, had National Hospital Association coverage for this period from 1935 to 1946? A. It was in the middle '30s. I don't recall exactly, but we had it, yes.

Q. Could you tell me about when it was you first got these reports from some of your employees that the doctors in Jackson County did not take tickets? A. It was about a year before we made the change.

Q. That would make it about 1945? A. Yes.

Q. Did the reports indicate that none of the doctors would take them or just a part of them did not want to take them? A. I don't know whether it was unanimous. I think a majority of the doctors would not accept them.

Q. Were those doctors all in Ashland or were some of them in Medford? A. Some were in Medford.

Q. Were all of the men under National when you
1042 had the National Hospital Association? A. I think they were.

Q. It was not optional with them? A. I don't think so. I am not positive about it, but I don't think so.

The Court: Why would it not be optional? No man has to come under the plan if he did not want it.

Mr. Jaureguy: You are asking me, your Honor?

The Court: Yes.

Mr. Jaureguy. At some time—I don't know when, but I could look it up—a statute was passed in which it was provided that was optional with the men, that no man should be compelled to do it if he did not want to. When that was, I don't know.

The Court: Wasn't it always optional?

Mr. Jaureguy: No, I think not, your Honor. That was a statute that was passed—

The Court: How could you make me, for instance, at any time in the history of Oregon—

Mr. Jaureguy: I misspoke myself, I think, your Honor. I don't think that, as a matter of law, it was ever compulsory, but it was thought to be compulsory, and it was thought that an employer could say to his men, "We have got this plan and you are going to take it. Just take it, that is all."

I think Mr. Bechtold said that there was so much
1043 complaint of that that something in there—I can't recall the year—the Legislature passed a special

statute providing that men did not have to take it unless they wanted to. It was optional.

Mr. Marcus: I do not recall any such a thing, your Honor. If Mr. Jaureguy does not know, he should not insinuate. As far as I am concerned, I do not know. This is the first time I ever heard of any such a suggestion.

Mr. Jaureguy: There is no insinuation on my part when I say that the statute was passed.

The Court: Let us finish up in good spirits.

Mr. Jaureguy: Yes, of course.

The Court: What was it you didn't know?

Mr. Marcus: I don't know of there being any compulsion at any time, during any of this period, on the part of the employee.

Mr. Jaureguy:

Q. During the time that the doctors did not take tickets how did you get reimbursement, or how did the employees get reimbursement? Did you get a bill from the doctors and then send it on to National? A. No, they would not give the company a bill. The employee would settle the bill personally with the doctor, and, as I understand, they would, in turn, then send the bill to the hospital association which would reimburse them.

Q. Have you found the OPS satisfactory? A. Yes.

Q. Your men are seasonal workers? A. Part
1044 of them are, and some of them—we have steady employees, of course, but the majority are seasonal.

Q. The majority are seasonal employees? A. Yes.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Marcus: Your Honor, I would like at this time to read a few items.

The first is from Exhibit 718, the April, 1946, issue of Northwest Medicine. The title is "Private Patient Policy —Restated for Returning Doctors."

"At the request of numerous medical officers recently returned from service, this section prints a review of the essential principles in handling various questionable compensation and insurance 'coverage' cases under the private patient policy recommended by the Oregon State Medical Society.

"Excluding charity cases, all patients normally seen by doctors fall into two categories, strictly private patients and those covered or protected by some form of contractual obligations, good, bad or indifferent. The handling of private patients needs no elaboration, but handling of the so-called contract cases has some easily avoided pitfalls.

1045 "In general, contract cases classed on an ethical basis fall into three main categories: (1) Oregon Physicians Service and State Industrial Accident Commission cases; (2) those covered by bona fide insurance carriers, indemnity or otherwise; (3) the rest of the cats and dogs such as various pseudoinsurance schemes, commercial hospital associations, and sundry benevolent and 'company' plans including those of some of the railroads.

"Cases falling into the first category should be seen without any question. O.P.S. has a contract with each participating doctor, voluntarily entered into, and the doctors of the state through their own Oregon State Medical Society have entered into voluntary arrangement with the State Industrial Accident Commission to render medical attention for agreed fees.

"Cases falling into the second category offer no great problem since they are usually of a private patient character to start with, and are not directed ordinarily to any small group of physicians, but each patient is free to consult the physician of his own selection.

"It is the cases falling into the third category which seem to present a handling problem to *some* doctors, although to most doctors there is no problem whatsoever. These 'third-rate-coverage' cases have some kind of evidence (usually a 'ticket' or some identification), or a story, indicating they may have some form of financial
1046 arrangement with some commercial firm. Boring into the case one will usually find there is a questionable feature of some sort in the arrangement. Either the patient is not permitted a free choice of physician, being directed to take his troubles to one or a very small number of doctors, or the doctors who are willing to see the patient, are deprived of adequate payment in the case, either by being compensated by an inadequate salary or what eventually amounts to reduced fee. In many instances there is often a middle man sitting in the picture extracting a good if unevident thing for the unnecessary handling of the transaction of bringing patient and doctor together.

"To avoid the questionable medical contracts of one sort and another falling into the third category mentioned above, there is one definitely safe procedure which is being followed more and more throughout the state. *All patients falling into the third class are seen strictly as private patients.* This enables the ethical doctor to render the medical services sought without becoming involved in any way with the questionable end of the matter, and without becoming an unfair competitor to his colleagues."

Mr. Jaureguy: I wonder if I might read some more of this, and this applies to a lot of others that have been read: "Opinions, Views or Comments presented in
1047 articles appearing in this section are those of the individual authors and are not necessarily those of Oregon State Medical Society."

Mr. Marcus: There is no author of that item. That is not an article. There is an article by Dr. Gordon Leitch which I have not read from.

(The balance of the foregoing article from Northwest Medicine is as follows:)

"The procedure is quite simple. The doctor usually takes enough time off (this is important in preventing a misunderstanding with each patient) to explain to the patient why he is unable to see him under the questionable cover age presented, but is more than willing to see him as a private patient. Care is taken to explain for the medical services furnished, the doctor expects the patient to pay him directly, at which time a receipt will be given. Upon presentation of this receipt to whatever outfit the patient belongs or subscribes, he will undoubtedly be reimbursed, although on the record of past performance it would appear an occasional seeker after reimbursement has had to 'holler loud.'

"As a doctor treating a private patient, the physician is under no obligation whatsoever to make any kind of a report to any third party upon the condition of his patient.

The patient, of course, is at libetry to give all the
1048 details, and it is his right to demand and receive an itemized statement from the doctor, showing the amounts and the dates of the treatments or charges. Some doctors furnish this itemization at the time receipt

for payment is issued; others do not give it until it is requested.

"The procedure is not without some financial risk for the doctor involved. The risk is simply the credit risk incidental to seeing any private patient. The patient may not pay.

"The thought of the slight financial risk involved, however, has been sufficient in the past to cause many unthinking doctors to panic. Apparently they failed to see that by refusing a dollar from a 'guaranteed' source, they were actually protecting themselves, and their colleagues, from being sold down the river on a cut-rate deal. Actually, the exploiters of the profession have heretofore, as now, relied most heavily upon the colossal avarice of certain short-sighted doctors to continue selling the profession down the river of cut-rate medicine, while the exploiters enjoy a huge belly laugh and prosper.

"The private patient policy has produced excellent results both ethically and financially for those doctors who have had the courage of their convictions, which may prove a surprise to those avaricious individuals who are busily prostituting their services for a dollar in hand."

Mr. Marcus: The next item is from Exhibit 1722, a letter dated October 3, 1947, from the Oregon Physicians' Service to Dr. J. W. Neighbor, Medical Director, Permanente Hospital, Vanport.

"Dear Dr. Neighbor:

"This will acknowledge receipt of your letter of September 29, 1947, which inquires concerning certain procedures to be followed in connection with the rendering of services to students of Vanport Extension College under the terms of a contract held by Oregon Physicians' Service.

"As stated to your Dr. Noehren when he called at this office last Monday, we shall present this matter to our Multnomah County Supervisory Committee for some equitable determination in the near future. Immediately thereafter we shall be pleased to advise you further."

And then Exhibit 1723, which is another letter from the Oregon Physicians' Service to Dr. Neighbor.

1049

(Exhibit 1723 is as follows:)

"November 6, 1947

"Dr. J. W. Neighbor, Medical Director
Northern Permanente Foundation
Permanente Hospital—Vanport
Vanport City, Oregon.

"Dear Dr. Neighbor:

1050 "Reference is made to your previous letters of September 29 and October 4, 1947. The matters contained in you letters were discussed fully at a recent meeting of the Multnomah County Medical Society's Supervisory Committee of Oregon Physicians' Service.

"By motion duly made and carried the Committee declined to accede to the Foundation's request on the grounds that the By-Laws of Oregon Physicians' Service limits physician-participation in the plan to members of the Oregon State Medical Society and/or any component medical society in Oregon. It is the Committee's understanding that none of the doctors employed by the Northern Permanente Foundation is a member of either the Oregon State Medical Society or the Multnomah County Medical Society and that such non-membership automatically would prevent staff membership participation in the O.P.S. plan. Doubtless Foundation physicians will have occasion to care for some O.P.S. subscribers on the same basis as that utilized by other non-staff physicians—in bonafide emegencies.

"If the status of Permanente physicians with reference to possible medical society membership should change at any future date, we should be pleased to discuss this situation further with you.

"Sincerely yours,

Oregon Physicians' Service

"WCM:LR" General Manager"

1051 Mr. Marcus: And then from Exhibit 444, which is a Memorandum of Understanding made in July, 1947, between the Oregon Physicians' Service and the Oregon State Medical Society, I am reading from Paragraph 5:

"5. Payments by OPS for services rendered by members of the said staff to persons requiring treatment under OPS contracts shall be made primarily according to the fee schedule or schedules which shall be agreed upon from time to time by and between said society and the Board of Directors of OPS.

HERBERT FAUBION was thereupon produced as a witness on behalf of Plaintiff and, being first dully sworn, was examined and testified as follows:

Direct Examination

By Mr. Weinstein:

Q. You are Herbert Faubion? A. Yes.

Mr. Weinstein: I would like to have this file of documents marked for identification.

(Summary of records taken from National Hospital Association regarding the case of Frank C. Badger, containing statements, correspondence, etc., was thereupon 1052 marked Plaintiff's Identification No. 1943.)

Mr. Weinstein: I would like to offer this Exhibit 1943 in evidence.

The Court: You will have to identify it further by the witness, or is it self-evident? Does it identify itself? What is it?

Mr. Weinstein: A summary of records taken from the National Hospital Association regarding the case of Mr. Frank C. Badger, and it contains a record of the bills and so forth, correspondence and other documents from the NHA files.

The Court: Admitted, provisionally.

(File of documents heretofore identified as Plaintiff's Identification No. 1943 was thereupon received in evidence and marked Plaintiff's Exhibition No. 1943.)

Mr. Weinstein:

Q. What is your address, Mr. Faubion? A. Cathlamet, Washington.

Q. What is your occupation? A. I am Business Agent for the union.

Q. What union? A. International Woodworkers.

Q. In what state is that? A. Well, I represent the Cathlamet local and the Naselle local, with their headquarters in Washington.

Q. Are members of the two locals that you re-
1053 present covered by any prepaid medical care plan?

A. Yes, they are.

Q. What plan do they have? A. Generally, in the Cathlamet area they are covered by the Industrial Hospital Association and in the Naselle area, by the National Hospital Association.

Q. Do the men from your union come to you regarding any troubles they might have with respect to their prepaid medical care coverage? A. Yes, that is true.

Mr. Jaureguy: This is at Cathlamet and Naselle, Washington. We do not have any of our defendants in the State of Washington.

Mr. Weinstein: I think the relevance will be shown, your Honor.

Q. Do your members in Washington frequently come into Oregon for medical treatment? A. That is true.

Q. What method of transportation do they use? A. Oh, they come by their cars. If they are seriously injured, they are brought by ambulance. If they go to Portland, they ordinarily come by the Washington side, I presume, to Vancouver. If they go to Astoria, they cross on the ferry at Astoria.

Q. Has your attention been called to complaints by men
that doctors in Oregon refused to accept National
1054 or Industrial tickets? A. It is generally under-
stood down there that that is true. They won't take them.

Q. Has your attention ever been called to difficulties of your members who have become ill in Washington, going across over into Astoria, Oregon, for medical treatment, because of doctors' refusal to take tickets in Oregon?

Mr. Jaureguy: I object to that, your Honor, as a leading question.

The Court: Answer.

A. My attention has been called to fellows who were refused in Oregon and, as I said, it is generally understood down there, so that now I think a majority of them do not